

The Malayan Law Journal

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REPORTS

OF MALAYSIAN, SINGAPORE AND BRUNEI CASES DETERMINED IN THE HIGH COURTS,
THE SUPREME COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF
CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

Tan See Tee v Ong Brothers Realty Pte Ltd

COURT OF APPEAL (SINGAPORE) – CIVIL APPEAL NO 12 OF
1986
WEE CHONG JIN CJ, CHAN SEK KEONG AND CHUA JJ
22 MARCH 1989

Contract – Existence of agreement between the parties – Question of fact

Civil Procedure – Trial court's finding of fact – Power of appellate court to overturn trial court's finding

The appellant/plaintiff was a monthly tenant in premises belonging to the respondents/defendants. The defendants' shareholders had indicated that they wanted to sell their entire shareholdings to the plaintiff and 17 other tenants in the vicinity. All 18 tenants held a meeting where it was decided that every tenant would buy and that any tenant who refused would be evicted. The plaintiff refused to buy and the other tenants concluded the purchase of the defendants' shares without him. The plaintiff claimed that two persons who were the director and the secretary of the defendants had approached him and agreed to pay him, on behalf of the defendants, \$15,000 if he moved out. The defendants denied the existence of such an agreement. The trial court dismissed the plaintiff's claim and the plaintiff appealed to the Court of Appeal.

Held, dismissing the appeal:

(1) Where a judge has made a finding of fact, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen or heard the witnesses could not be sufficient to explain or justify his conclusion.

(2) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.

(3) The evidence of the plaintiff was riddled with inconsistencies. The trial judge was therefore justified in finding that there was no agreement between the parties. The appeal was accordingly rejected.

Cases referred to

- 1 *Watt (Thomas) v Thomas* [1947] AC 484 (folld)
- 2 *Arumugam & Anor v Lim Boon Neo* [1988] 1 MLJ 80 (folld)

Lee Tow Kiat for the appellant/plaintiff.

Indarpal Singh Dhot for the respondents/defendants.

Cur Adv Vult

- A **Wee Chong Jin CJ** (delivering the judgment of the court): This appeal arises from a claim by the appellant/plaintiff against the respondents/defendants in respect of a sum of \$15,000 pertaining to the settlement of a dispute regarding the appellant's tenancy. The settlement was allegedly evidenced by a memorandum dated 10 December 1980. The matter was tried before Lai J and the appellant's claim was dismissed with costs.

It is clear from the outset that the outcome of this appeal hinges on whether the trial judge was justified in his finding that there was no agreement between the appellant and respondents for the sum of \$15,000.

C **Undisputed facts**

- The undisputed facts of the case are as follows. The appellant was a monthly tenant of 121-A Upper Paya Lebar Road, Singapore since 1973. The premises were situated on the first floor of a two-storey building and, along with 17 other tenanted units in the vicinity, were owned by the respondents. Sometime in June 1980, the respondents' shareholders offered to sell their entire shareholdings to the 18 tenants, including the appellant, at a price of \$2.5 million. That amount represented the total value of all the 18 units, there being no other asset or liability of the respondents. However, the offer contained a stipulation that all the 18 tenants had up to 11 July 1980 to purchase the shareholdings. On that day, a deposit of 5% of the purchase price had to be paid. Following the offer, all the tenants held a meeting in mid-June 1980 to consider the terms. At that meeting, the majority reached an agreement that every tenant would buy and that any tenant who refused to buy would be evicted. The appellant, however, intimated that he was unable to take up the offer. In any event, on 10 July 1980, each of the other 17 tenants promptly paid up the 5% deposit. When the appellant failed to make his payment, the other 17 collectively paid the 5% deposit for the appellant's shares. On 16 September 1980, the sale of the shares to the 17 tenants were completed.

Appellant's evidence

- H As regards the appellant's flat, the events that transpired after the June meeting of the tenants are in dispute. According to the appellant, he intimated that he was unable to take up the shares in the respondents' shareholdings as he was not a Singapore citizen. He then

advertised his rights for sale in the Chinese newspapers. In response to the advertisement, one Heng Joon Cheng agreed to purchase his rights for \$15,000 and promptly paid a deposit of \$1,000. However, the agreement fell through when Heng failed to turn up to complete the transaction.

The appellant later found another prospective purchaser, one Goh Bak Siang, who agreed to buy the appellant's rights for \$15,000. According to the appellant, this sum of \$15,000 was to be 'tea money' or a sort of premium for giving up his tenancy rights. The appellant testified that both he and Goh met with representatives of the respondents on 11 July 1980. There, he informed the respondents' representatives that Goh was to be the new purchaser. After some discussion, one Sng Kok Boon informed the appellant that the respondents themselves would purchase his rights for \$15,000 and that this sum would be paid over on 17 September 1980. However, on 26 September 1980, the appellant received a notice to quit. Upon receipt of this notice, the appellant approached Leong Chew Chin and SM Tang, a director and secretary respectively of the respondents, to clarify the situation. According to the appellant, both Leong and Tang agreed on behalf of the respondents to pay him \$15,000 if he moved out by the end of November 1980. The appellant also undertook to carry out repairs to the premises to restore it to its original position.

Respondents' evidence

The respondents' main witnesses, Yong Heng Kin ('Yong') and Yam Kok Chong ('Yam'), however, gave different versions of the events that transpired. Yam Kok Chong was then a tenant of the respondents, occupying the lower floor of the same unit as the appellant. Yam said that sometime after 16 September 1980 he was approached by Sng Kok Boon on behalf of the appellant with whom he was not on speaking terms and was told that the appellant would vacate the premises by March 1981 on payment of \$15,000. His reply to Sng Kok Boon was that he would pay \$15,000 if the appellant vacated the flat by the end of September 1980. He also told Yong of his willingness to pay as Yong had also spoken to him on this matter. His offer was refused by the appellant because he was unable to move out by the end of September 1980 as it was difficult for him to find alternative accommodation.

Subsequently, on 3 December 1980, after legal proceedings to evict the appellant had been commenced, there was another meeting between the appellant and Yong. At that meeting, the payment of \$15,000 was again raised. Yong told the appellant that he had to consult Yam. Yam subsequently conveyed through Yong that he would pay the \$15,000 subject to certain specified deductions and after repairs to the flat had been carried out. The appellant then agreed to these terms.

A *Our decision*

The principles of law governing an appellate court when deciding an appeal on questions of fact are well settled. The most often-cited statement of these principles is that of Lord Thankerton in *Watt (Thomas) v Thomas*¹ where he said (at pp 487-488):

- B I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion.
- C II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.
- D III. The appellate court, either because the reasons given by the trial judge are not satisfactory or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.

E These principles were expressly endorsed by this court in *Arumugam & Anor v Lim Boon Neo*.²

Having regard to his grounds of decision, we are in no doubt that the learned trial judge had reached his decision on the evidence before him. We see no reason to interfere with his rejection of the appellant's evidence that he had met Leong Chew Chin and SM Tang in late September 1980 or early October 1980 who had agreed on behalf of the respondents that the respondents would pay him \$15,000 if he vacated by the end of November 1980 after restoring the flat to its original condition. We agree with the trial judge that the evidence in support of this contention is riddled with discrepancies and inconsistencies. In his examination-in-chief, the appellant said that the terms of this purported agreement were that he had to move out by 30 November 1980 and had to carry out repairs to restore it to its original condition. However, the appellant's solicitors' letter dated 23 October 1980 relied upon by the appellant as confirmation of the agreement made no mention of the date for delivery of possession. On the other hand, the same letter stated that the appellant was to vacate the premises 'in the same condition as it is now in' which is clearly different from 'restoring the flat to its original condition'.

I The trial judge found that Yam was the party with whom the appellant dealt and that the respondents were not a party to any agreement with regard to the payment of \$15,000 as consideration for the appellant delivering up vacant possession.

In these circumstances, we are of the opinion that the trial judge was justified in finding that there was no

agreement between the appellant and the respondents as regards the payment of \$15,000. Accordingly, this appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Lee Brothers; James CS Loh.*

Reported by *Terence Tan Bian Chye*

Tan Ah Yeo & Anor v Seow Teck Ming & Anor

HIGH COURT (SINGAPORE) – SUIT NO 1399 OF 1981
CHAO HICK TIN JC
14 FEBRUARY 1989

Civil Procedure – Judgment pronounced but not yet perfected – Whether court may recall judgment and hear further arguments – Alteration of judgment

Civil Procedure – Limitation – Whether s 8 of the UK Maritime Conventions Act 1911 is applicable to an ordinary common law negligence action – Action commenced after expiration of limitation period – Discretion of court to extend period – Pending negotiations at material time – Ignorance of limitation period or oversight regarding limitation on the part of parties or their solicitors – Defendants raising issue of limitation at a late stage – Whether substantial grounds or special reasons shown to justify extension – Limitation Act (Cap 163, 1985 Ed), s 3 – UK Maritime Conventions Act 1911, s 8

Statutory Interpretation – Imperial statute enacted at a time when Singapore was a British colony – Whether still part of the law of Singapore – Whether repealed in whole or in part by a local statute – Statute enacted to give effect to international conventions – Whether Parliament may widen the scope of an international convention in its application when enacting an Act of Parliament – Collision Convention 1910, arts 1 & 12 – Contributory Negligence and Personal Injuries Act (Cap 54, 1985 Ed), s 4(1) – UK Maritime Conventions Act 1911, ss 1, 9 & 10

The plaintiffs brought a negligence action in their capacity as the personal representatives of one Tay Kian Ho, deceased, claiming damages on behalf of the estate and the widow and children of the deceased under s 12 of the Civil Law Act arising out of a collision along the Singapore river between a tongkang and a motor lighter on 24 May 1978. The writ was issued on 30 April 1981. The statement of claim was filed on 12 February 1982. The writ and the statement of claim were served on the first and second defendants on 10 March 1982 and 9 March 1982 respectively. The appearance and the defence of the defendants were filed on 11 March 1982. The case was eventually fixed for hearing on 4 August 1988.

On 26 July 1988, the defendants applied for an order permitting them to amend the defence to add an additional ground, namely, that the action was time-barred by reason of s 8 of the Maritime Conventions Act 1911. The application was granted by the assistant registrar on 1 August 1988. In view of the amendment, the plaintiffs applied for certain preliminary questions to be decided. The questions were:

- (i) is the imperial Maritime Conventions Act 1911 ('the MC Act') or only s 1 thereof part of the laws of Singapore?

- A (ii) does the MC Act apply to a case where both vessels are Singapore-registered internal water craft and the collision takes place in the internal waters of Singapore and the parties are Singaporeans?
(iii) is the limitation period prescribed in s 8 of the MC Act applicable to an ordinary common law action for negligence for the benefit of the estate of the deceased, which also includes a dependency claim? and
B (iv) in the event that the answer to question (iii) is in the affirmative, will the court, in the circumstances of this case, exercise its discretion under the proviso to s 8 of the MC Act to extend the period of limitation prescribed therein?

- C Counsel for the plaintiffs sought to rely on s 4(1) of the Contributory Negligence and Personal Injuries Act (Cap 54, 1985 Ed) to say that only s 1 of the MC Act applied in Singapore. Another argument was that in Vol 8 of *The 1955 Revised Edition of the Laws of Singapore*, the MC Act was not listed as one of the imperial statutes which applied in Singapore. It was also contended for the plaintiffs that as the MC Act was enacted to give effect to the Collision Convention 1910, it should be interpreted in line with the Convention and that as the Convention applied in the case of a collision between sea-going vessels or between a sea-going vessel and a vessel of inland navigation, the Convention could not apply in the instant case.

- The correspondence between the parties showed that there had been negotiations between them regarding the claim prior to the expiration of a two-year period beginning from the accrual of the cause of action. From the beginning the insurers of the defendants had denied liability but had offered certain ex gratia payments.

- Following delivery of judgment in this case, the question arose whether the court could recall the judgment and hear further arguments.

F Held:

- (1) It was clear beyond any doubt that the MC Act applied to Singapore in 1911. The attention of the court had not been drawn to any subsequent Act of the United Kingdom (until 1963) or of Singapore which repealed the MC Act in so far as its application to Singapore was concerned. Accordingly, the MC Act was still part of the law of the land.

- G (2) A plain reading of s (1) of the Contributory Negligence and Personal Injuries Act showed that it recognized that the MC Act applied in Singapore. All that the section said was that the Contributory Negligence and Personal Injuries Act did not apply to a claim that fell within s 1 of the MC Act. It did in no way repeal any of the other provisions of the MC Act.

- H (3) Although in Vol 8 of the *1955 Revised Edition of the Laws of Singapore* the MC Act was not listed as one of the imperial statutes which applied in Singapore, it was clear that Vol 8 was not intended to be exhaustive. Instead, s 13 of the Revised Edition of the Laws Ordinance 1951 expressly provides that The Revised Edition of Ordinances may also contain a reprint of such imperial statutes as the Commissioners consider useful to include.

- I (4) The MC Act applied to the instant case notwithstanding the fact that the collision occurred in the Singapore river and both the vessels were inland water craft and the parties were Singaporeans. Just because the MC Act was enacted to give effect to two international conventions does not mean that Parliament may not widen the scope of the Act to cover its own nationals or its own inland water craft. While it is a principle of legal policy that an Act should be interpreted to conform with